

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FRANK KAUZLARICH,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT
OF SOCIAL AND HEALTH SERVICES,

Defendant.

CASE NO. C12-5649 BHS

ORDER DENYING PLAINTIFF'S
MOTION TO STRIKE AND
GRANTING DEFENDANT'S
MOTION TO REMAND

This matter comes before the Court on Defendant Washington State Department of Social and Health Services' ("DSHS") motion to remand (Dkt. 7) and Plaintiff Frank Kauzlarich's ("Kauzlarich") motion to strike (Dkt. 11). The Court has considered the pleadings filed in support of and in opposition to the motions and the remainder of the file and hereby denies Kauzlarich's motion and grants DSHS's motion for the reasons stated herein.

I. PROCEDURAL HISTORY

On July 20, 2012, Kauzlarich removed this matter from Thurston County Superior Court for the State of Washington. Dkt. 1. Kauzlarich failed to submit the underlying complaint with the notice of removal. Kauzlarich, however, asserted that the case was being removed pursuant to 28 U.S.C. § 1441 and that the Court had jurisdiction under 28 U.S.C. § 1291. *Id.* ¶¶ 11–12.

On August 17, 2012, DSHS filed a motion to remand. Dkt. 7. On September 7, 2012, Kauzlarich filed a motion to strike or continue hearing. Dkt. 11. On September 19, 2012, the Court renoted DSHS's motion to be heard concurrently with Kauzlarich's motion and stated that Kauzlarich's response to DSHS's motion was due no later than September 24, 2012. Dkt. 12. Kauzlarich did not file a response. On September 24, 2012, DSHS responded to Kauzlarich's motion. Dkt. 13.

II. DISCUSSION

A. Kauzlarich's Motion

DSHS argues that any prejudice that Kauzlarich may have suffered from the disputed noting date of DSHS's motion was alleviated when the Court renoted DSHS's motion. Dkt. 13. The Court agrees. Therefore, the Court denies Kauzlarich's motion.

B. DSHS's Motion

As an initial matter, the Court may consider a party's failure to respond to a motion as an admission that the motion has merit. Local Rule CR 7(b)(2). Kauzlarich failed to respond to DSHS's motion, and the Court considers this an admission that the matter should be remanded.

1 With regard to the merits of DSHS's motion, there is no arguable basis for
2 removal of this matter because the removal statute, 28 U.S.C. § 1441, only grants
3 defendants the power to remove an action. The only remaining question is whether the
4 Court should award attorney fees and costs for improper removal. DSHS moves for fees
5 pursuant to Fed. R. Civ. P. 11 because the notice of removal has no basis in law or fact
6 and the Court may grant the award against Kauzlarich's attorney. The Court finds that an
7 award of fees is not appropriate.

8 **III. ORDER**

9 Therefore, it is hereby **ORDERED** that DSHS's motion to remand (Dkt. 7) is
10 **GRANTED** and Kauzlarich motion to strike (Dkt. 11) is **DENIED**.

11 Dated this 3rd day of October, 2012.

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14 **BENJAMIN H. SETTLE**
15 United States District Judge
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